IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

(1) Contempt Petition No.24 of 2007
in
Writ Petition No.248 of 2007

1. Vishwanath U.Mada
and others ..Petitioners

vs.

1. Bihari Front and ors. ..Respondents

Mr.Shiraz Rustomjee i/b M/s Pravin Mehta and Mithi and Co. for petitioners.
Mr.A.C.Singh for respondent nos.1 to 3
Mr.K.R.Belosey, Govt.Pleader for respondent nos.4 and 5
Ms.Shobha Ajithkumar for respondent no.6

(2) Contempt Petition No.54 of 2007
in
Writ Petition No.2731 of 2006

1. Vishwanath U.Mada
and others ..Petitioners

vs.

1. Uttar Bharatiya Viksas
Samiti and others ..Respondents

Mr.Shiraz Rustomajee i/b M/s Pravin Mehta and Mithi and Co. for petitioners.
Mr.Sunil Singh for respondent nos.1 and 2
Mr.K.R.Belosey, G.P. for respondent nos.3 and 4.
Ms.Shobha Ajithkumar for B.M.C.

CORAM: S.C.DHARMADHIKARI J
19th September,2007

P.C.

1. In Contempt Petition No.24 of 2007, it is prayed that contemnor nos.1,2 and 3 and other office bearers of Association - Bihari Front - be

dealt with and punished for wilful disobedience of the orders passed by this Court on 19th October, 2006 and 25th October, 2006.

2. These orders are passed in Public Interest Litigation Writ Petition No.2731 of 2006 on 19th October, 2006 by Division Bench and in Writ Petition (Ld) No.2505 of 2006 on 25th October, 2006 by the learned single Judge. These orders read thus:

(1) Order dated 19th October, 2006 in W.P.No.2731 of 2006

> "Let notice be issued to the respondents to show cause why, this writ petition (PIL) be not admitted. Notice is made returnable on 7th December, 2006.
>
> 2. We are informed that Chhat Pooja is to be celebrated on 28th and 29th October, 2006 at Juhu Beach. The counsel for the petitioner also informs us that more than five lakh persons are likely congregate for performing Chhat Pooja at Juhu Beach.
>
> 3. Looking to the urgency in the matter, we pass the following interim order:
>
> (i) The petitioner and the other Trusts like the petitioner are permitted to erect one platform of about 10 ft. x 15 ft. having the height of 4 ft. for performance of the rituals required for Chhat Pooja.
>
> ii) The petitioner and the Trusts like the petitioner are also permitted to have two small enclosures of about 10 ft. x 15 ft. to enable the ladies to change their clothes.
>
> iii) The location of the platform and enclosures shall be finalised by the

Collector, Mumbai Suburban District in consultation with the police authorities within three days from today after holding the meeting with the petitioner and such other trusts.

iv) None of the Trusts/organisers shall be entitled to use the amplifiers/microphones/speakers. No banners/posters or publicity of any nature whatsoever shall be permitted. We clarify that no political party shall be permitted to erect any platform or enclosure.

v) The Collector in consultation with the police authorities shall arrange for public announcement system which should be open for the use of the Trusts/organisers as well in the case of emergency.

vi) The Trusts/organisers who erect the platform and enclosures shall remove them by 4.00 p.m. on 29th October, 2006 and clean the entire area used by them and restore the same in good condition.

vii) The police authorities are directed to inspect such platforms from the safety point of view. However, for any untoward incident, the responsibility shall squarely lie upon the trusts/organisers."

Order dated 25th October, 2007 passed by S.R.Sathe J. in Writ Petition (Ld) No.2505 of 2006.

"1. Heard both the learned Advocates.

2. Being aggrieved by the order passed by the Collector, Mumbai on 17.10.2006 on the application submitted by the petitioners, the petitioners have filed the present writ petition wherein the petitioners are seeking interim relief that they be permitted to use loud speakers etc. till 10.00 p.m. on 28.10.2006 and they be allowed to perform Bhajan Sandhya at Juhu Beach. The learned Advocate for the Government, fairly submitted that they have no objection to permit the petitioners to perform Bhajan Sandhya on the terms and conditions impleaded in the order passed in Writ Petition No.2731‘ of 2006 wherein the

> Division Bench of this Court has passed a detailed order and mentioned specific terms and conditions.
>
> 3. In view of this the petitioners are permitted to perform Bhajan Sandhya abiding the terms and conditions mentioned in order passed in Writ Petition No.2721 of 2006 dated 19.10.2006.
>
> 4. The learned Advocate for the petitioners strenuously argued before me that in writ petition mentioned above petitioners had not asked for permission to use amplifiers. However, as it is the said writ petition is not before this Court and as such one cannot say specifically as to whether prayer to that effect was made in earlier writ petition. It is an admitted fact that petitioners had not requested the Collector to permit the petitioner to use amplifiers at the time of Bhajan Sandhya. The learned Advocate for the petitioners submits that such application is in fact required to be made to the Police Authorities. Be that as it may, the fact remains that at present there is no any order passed by any authority showing that the petitioners had moved the concerned authorities seeking permission for using amplifiers and the concerned authority has rejected the same. So, that point need not be considered by this Court at this stage and pass any interim relief in that behalf.
>
> 5. The parties to act on the copy of this order duly authenticated by Associate of this Court."

3. Mr.Rustomjee appearing for the petitioners submits that the orders have been breached and violated wilfully and deliberately by erecting the stage/platform measuring atleast 100 ft. x 30 ft.when maximum size of the stage permitted under the order was 10 ft. x 15 ft. The first contemnor did not obtain permission of the Collector, Mumbai

Suburban District for location of the stage/platform in accordance with the orders. Similarly, banners were displayed and projection screen was erected during the event on 28th October, 2006 although this was not permitted to be done. It is also contended by Mr.Rustomjee that Loudspeakers were utilised and music was played with the aid of Amplifier with high volume although the order prohibits use of amplifier and loudspeakers.

4. It is undisputed before me that the first contemnor Bihari Front and another organisation celebrate not only for its members but for others the "Chhat Pooja". The said organisation/association has been arranging the event at Juhu Beach. The Pooja is performed and bath is taken in the sea water by devotees. The event is organised through out night and holy bath is taken in the early hours of the morning. The submission is that such an event at Juhu Beach not only disrupts and disturbs the even tempo of life in as much as there is residential area around that place/beach, but also defaces the beach. By organising such an event the organisers manage to gather lakhs of devotees and thus put undue burden and pressure on public amenities besides spoiling

the Beach and surrounding. It is in pursuance of the writ petition which was filed by Shrimati Daulatidevi Ramnath Yadav Memorial Trust, that the directions were issued by this Court. However, that writ petition was treated as Public Interest Litigation by this Court. My attention is also invited to the order passed by the learned single Judge in Writ Petition (Ld) No.2505 of 2006 which was filed by the first contemnor to this contempt petition. Writ Petition No.2731 of 2006 was disposed of on 7th December, 2006 in terms of the order passed on 19th October, 2006 treating the same as final.

5. In short, the submission is that the beach is a public place and the said public place is for the benefit of all those who visit the same, reside within its vicinity and not concerned with "Chhat Pooja." It cannot be said that the authorities are oblivious of the order of the Court so also their duties to public. They cnanot proceed to grant permission to erect a stage, use microphone and amplifier so also loudspeaker and carry on such activities which are otherwise prohibited in law. My attention is invited to the fact that even the public authorities did not act in accordance with the order and, therefore, this is a fit case where

action should be taken and the guilty be dealt with sternly within the four corners of Contempt of Courts Act, 1971. Mr.Rustomjee has invited my attention to not only the orders passed by this Court but to paras 5, 7 and 11 of the contempt petition. My attention is also invited to the photographs of the event and the recording of the same in para 12 of the contempt petition. Mr.Rustomjee's complaint is that 4th and 5th contemnors have acted in breach of and in contempt of the orders of this Court as they allowed the first contemnor to flagrantly and openly violate the conditions imposed by this Court in its aforesaid orders. It is also contended by him that Bombay Municipal Corporation was the respondent in the petition filed by Shrimati Daulatidevi Ramnath Yadav Memorial Trust and thus aware of the order passed by this Court and it could not have granted permission contrary to the same.

6. When these contempt petitions were placed before the learned single Judge of this Court on 11th June, 2007, the learned single Judge after hearing the petitioners and respondent nos.1, 2 and 3 passed a detailed order holding, prima facie, that the order of this Court has been violated and admitted the petition. Thereafter in accordance

with the Rules once again the proceedings were served and explanation/reply, if any, was allowed to be filed within the time stipulated by this Court's order in that behalf.

7. Accordingly, affidavits are filed and contempt petitions are placed before me for hearing and final disposal. After hearing the parties at some length on 5th September, 2007, I had noted that an affidavit was filed in contempt petition no.54 of 2007 which was directed to be heard along with contempt petition no.24 of 2007. In that petition as well, similar contentions have been raised but the organisation charged with contempt is different. That organisation is Uttar Bharatiya Vikas Samiti and its office bearers. Upon perusal of that affidavit, copies of which were also supplied to the petitioners and others, I expressed an opinion that the said affidavit instead of expressing regrets for the acts committed earlier, reiterates that the same may be repeated this year as well. Considering that in the present year (2007) Chhat Pooja falls on 15th and 16th November, 2007, I called upon the parties to once again consider their position, more so, in the interest of general public and their safety. The city witnesses a Festive quarter from August till end of

November. These festivals are celebrated and events organised on a huge scale. There is immense pressure on civic amenities as well as on police machinery. Every organisation or association in charge of organising the event should be aware of its duties toward public and should act in a manner so as to subserve public good and not do anything which would shake their faith in judicial process.

8. This order was passed after the request of both sides to have a joint inspection at the site was made and it was noted that site can be inspected by them again and a place could be demarcated for stage and enclosures to be set up so also arrangement for lighting and proper ingress and exit The parties were given time to inspect the site.

9. Accordingly, site was inspected by the parties and all organisations gave up their earlier stand. They are not insisting upon the size of the stage and enclosures to be in accordance with the affidavit of Uttar Bharatiya Vikas Samiti. They urge that they have genuine and bonafide desire to abide by this Court’s orders reproduced above. They prayed that due opportunity be given for the same. They have submitted through Counsel that the

arrangement now decided would bind them together with all earlier directions.

10. An affidavit has now been placed on record by Mr.Belosey. The deponent of the affidavit is Resident Deputy Collector, Mumbai Suburban District. He has stated that on 8th September, 2007 a joint meeting of all the concerned parties was held at Juhu Beach. The police officials so also the representatives of the organisation concerned were present along with Senior Officers from the District Collectorate. Apart from the Collector himself, officials from Bombay Municipal Corporation were also present. The parties arrived at an amicable arrangement in as much as the stage and enclosure for uttar Bharatiya Samiti would be exactly in front of Hotel Holiday Inn as shown in the plan demarcated as Exhibit A to the affidavit and Bihari Front would put up the stage and enclosure in front of Palm Grove Hotel as shown in the location plan Exhibit B. Resident Deputy Collector states that both sites are suitable to the parties as these spots are near the approach road. Asstt.Commissioner of Police has also approved the site and has assured that the arrangement for Public Announcement System will be organised by the police authorities on 15th and

16th November, 2007. Resident Deputy Collector has stated that no loudspeaker will be allowed in accordance with the order passed by this Court on 19th October, 2006 and the Bombay Municipal Corporation Authorities would assist the organisation in procuring the lighting facilities and temporary electricity connection, although, the same would be provided by Reliance Energy.

11. It is expressly stated in para 6 of this affidavit that there will be no Amusement, Dance, Entertainment programme at the Chhat Pooja site and Juhu Beach. Only Chhat Pooja and religious rituals will be performed. No crane or ship or any such mechanical equipment would be used by the organising parties for presenting dances and other entertainment programmes on this occasion, on Juhu Beach or waterfront.

12. A copy of this affidavit has been served on the contemnor nos.1, 2 and 3 in contempt petition no. 24 of 2007 as also on contemnors in contempt petition no.54 of 2007. The petitioners in both petitions have received a copy of this affidavit.

13. Mr.Rustomjee appearing for the petitioners

states that this affidavit correctly records what transpired in the meeting and on instructions he makes a further statement that the petitioners would not object to what has been planned on 15th and 16th November, 2007 provided all concerned ensure that the orders dated 19th and 25th October, 2006 so also 7th December, 2006 are not violated in any manner.

14. Upon taking instructions from the organisations, whose representatives including Mr.Nirupam are present in Court, their learned Counsel make a statement that they would fully abide by what has been stated in the affidavit of Resident Deputy Collector Amol Yadav. However, they submit that this should not prevent them from moving the Division Bench for appropriate modification or clarification and that aspect should not be dealt with or touched upon in these petitions.

15. In the event of the agreement between parties, the contention of the learned Counsel appearing for respondent nos.1 to 3 in these contempt petitions is that these petitions should be disposed of by not taking any action against them. While not disputing that the event of 28th October, 2006

organised by them, was not in accordance with the order and directions of this Court, yet, it is contended that the same was held pursuant to the permission of the Bombay Municipal Corporation and under the bonafide belief that such permission being granted, there will be no question of violation of the orders passed by this Court. Hence, this Court should take lenient view of the entire action and drop the proceedings further.

16. There are affidavits filed by the authorities: The affidavit filed by Bombay Municipal Corporation on 14th August, 2007 proceeds to state thus:

> "3. Without prejudice to the aforesaid contentions which are without prejudice to one another, the true facts of the case are as follows:
>
> (a).....
>
> (b) I say that Corporation was a party to Writ Petition No.2731 of 2006 as well as Writ Petition No.3000 of 2002. However, Corporation was not party to Writ Petition bearing No.248 of 2006 which was filed by respondent no.1 against State of Maharashtra

challenging the order issued by the Collector dated 17.10.2006 rejecting the permission for erection of the stage on Juhu beach. I say that at the time of applying for the permission for putting up temporary shed, the orders of the Hon'ble High Court were not communicated by respondent no.3 to me. I say that though Corporation was a party to Writ Petition No.2731 of 2006 wherein the Hon'ble Court passed the orders on 19.10.2006, the said order was not received by the ward at the time of issuance of the permission letter dated 20.10.2006. I say that had the said order been brought to my notice at the time of application, the said permission would never have been issued by myself. I say that permission letter was issued with bonafide intention not being aware of the orders of the Hon'ble Court dated 19.10.2006. Moreover, it is pertinent to note that the permission has been granted by me for erection of temporary shed not on the Juhu Beach but in the premises of Hotel Horizon."

In such circumstances, it is admitted that a mistake was committed in granting "No

Objection/Permission" to put up the stage. The copy of the permission granted by the owners of Hotel Horozen Pvt. Ltd. is also annexed. Relying upon this, the Bombay Municipal Corporation granted permission for the stage.

17. There is an affidavit filed by the Collector himself stating therein that the permission was granted by him on the basis that the Asstt.Commissioner, B.M.C. on 20th October, 2006 granted N.O.C. Further, another Trust has erected a covered compartment on the back side of Nippon Society. The covered compartment was earmarked for ladies who were to change clothes after taking a dip in the sea. It is on this basis that the platform was to be removed on 29th October, 2006 that no action was taken by the Collectorate. These statements are made in the affidavit dated 19th July, 2007.

18. The other contemnors in contempt petition No.24 of 2007 relied upon their earlier affidavit and while maintaining that they have highest regards for this Court relied upon the permission for prior years and also for the current year granted by the Bombay Municipal Corporation’s permission. They also relied upon the permission

granted by Juhu Police Station and application to the Collector and his reply thereto dated 26th October, 2006. A reference is made to the complaint and notice received.

19. It has been brought to my notice that more than 5 lac people without any invitation card, gather at the Beach on the eve of "Chhaat Pooja". This is not a political rally or any religious or social activity. The contemnors were under the bonafide impression that the order does not prohibit celebration of any pooja, gathering of people and that is how when other festivals are celebrated in the same manner this event was organised. Non Government Organisation of which Mr.Sanjay Nirupam, contemnor no.3 is the office bearer has stated that the festival has been going on for quite some time and it is being celebrated in the same manner through out the territory of India and not merely at Juhu Beach. There has been no untoward incident. There is no deliberate and wilful disobedience of this Court’s order and if the same has been breached, that breach is unintentional.

20. Mr.Nirupam is present in Court and has tendered his unconditional apology.

21. After perusing the contempt petitions and annexures thereto, so also further affidavit in pursuance of my order, I am of the view that larger issues need not be gone into. In the peculiar facts of this case, when none disputes that the order of this Court does not permit celebration to the extent indicated in the petition and affidavit, then, it is also undisputed that the order and direction of this Court has not been implemented and obeyed by not only the organisers of the event but by the officials of the State Government and Bombay Municipal Corporation. Each one of them was aware of his responsibility not only as a citizen of India but as an official of the State and Corporation machinery. The event organisers also do not dispute that size of stage, loudspeaker and amplifier being openly used and banners displayed clearly show that the order has not been implemented. Non implementation is by inadvertence and reliance is placed on several permissions.

22. In this behalf it is necessary to remind all concerned with the judicial process, their duty and approach towards the orders of the Courts. In Bigyan Kumar and others Vs. Union of India and others reported in AIR 1988 S.C.1025, this is what

is observed by the Hon’bleSupreme Court:

> "7. We would part with the matter by recording our serious concern and disapproval of the growing conduct of parties and public officers in particular of ignoring the directions of the Courts and the multiplying instances of confrontation. The Court, including the apex one, is a part of the State and is a built-in mechanism of the Constitution to administer justice in accordance withlaw. For discharging that duty, the Court has got to adopt an attitude of critical assessment of situations connected with litigation brought before it for adjudication. The manner of functioning of the Court in accord with the Rule of Law has to be dispassionate, objective and analytical. The Judges who preside over these courts do not act with a sense of superiority; nor do they look down upon others in the community. In order that the system may efficiently work and the purpose for which the Courts are established is duly served, it is necessary that everyone within the framework of the Rule of Law must accept the system, render due obedience to orders

> made and in the event of failure of compliance, the rod of justice must descend down to punish. We hope and trust that everyone within the system realises this situation and does not unnnecessarily get into a confrontation."

23 . In my view, there is no dispute that the order passed by this Court has been violated. However, when public authorities themselves, permit such activities either ignoring or brushing aside the Court’s orders then, it will be futile to go only after organisers of the event. If Public Officials do not feel that it is their duty to obey and implement the Court’s order, then, ordinary people and organisers of such events cannot be blamed solely. They alone are not responsible for the consequences. This is a joint act which has resulted on account of the order passed by this Court being not respected and obeyed by the parties. It is not as if they did not understand the order or consequences flowing therefrom. The order has been passed in their presence. In such circumstances, in the peculiar facts of this case, although the order has been breached, I do not propose to take any further action in the light of unconditional apology tendered by the officials as

well as organisers, which is genuine and bonafide. I do not wish to pass an order of conviction and sentence, more so, when I am of the opinion that breach has occured because of the aforesaid permissions. This is not a case of utter disregard or deliberate and wilful breach of the orders of this Court. No action is taken also because of readiness and willingness of the organisers to fully implement and abide by the orders of this Court so also not to contravene the arrangement for the ensuing event of 15th and 16th November, 2007. The arrangement which has been proposed by the Collector has been accepted by the police officials so also Municipal Corporation and the organisers in particular after the joint inspection of the site. Even it has been correctly recorded in the minutes of meeting. The plans have been prepared in accordance thereto and the plan correctly identifies the site/place. In such circumstances, for those reasons as well, no action is taken in these contempt petitions. The minutes of the meeting dated 8th September, 2007 taken on record as also the affidavit. The said minutes and the earlier orders shall be treated as orders and directions of this Court. The minutes are taken on record in presence of the parties. All statements therein are accepted.

24. I am not expressing any opinion on the rival contentions on modification of the order passed by the Division Bench which will be dealt with by the Division Bench as and when any application is made. For the time being, both sides do not dispute that the orders of this Court stand and they have to be implemented as long as they stand in the manner indicated therein. No permission or no objection certificate contrary to the orders and directions can be issued is also a matter on which both sides are not at issue. In such circumstances, accepting the arrangement proposed in the affidavit of 17th September, 2007 the contempt petitions are disposed of. Further all respondents undertake before me that they would abide by the minutes and earlier orders as above. Undertakings accepted. Contempt Petitions are disposed off in terms thereof. No costs.

(S.C.DHARMADHIKARI J.)